

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	: Robert Bruce Spertell
App. No	: 09/637,923
Filed	: August 14, 2000
For	: METHOD AND APPARATUS FOR TREATING SUBCUTANEOUS HISTOLOGICAL FEATURES
Examiner	: Fadi H. Dabour
Art Unit	: 3742

STATEMENT OF DOUGLAS HANSCOM SUPPORTING  
UNINTENTIONAL ABANDONMENT UNDER 37 C.F.R. § 1.137(b)

I, Douglas R. Hanscom, Esq. do hereby state as follows:

1. I am a citizen of the United States, and received my law degree from the George Washington University in 1972. I am a shareholder and patent attorney at the intellectual property law firm of Jones, Tullar & Cooper, PC, having its principal place of business at 2001 Jefferson Davis Hwy, Suite 1002, Arlington, Virginia 22202. I am a member of the Virginia State Bar and have been registered to practice before the United States Patent and Trademark Office since 1973 (Reg. No. 26,600).

2. I have reviewed the Decision on Petition mailed May 30, 2008 dismissing the petition to revive the above-identified application under 37 C.F.R. § 1.137(b).

3. My law firm was retained to prosecute patent applications assigned to MW Medical, Inc. and its wholly-owned subsidiary Microwave Medical Corporation (collectively "MW Medical," both of which shared the same correspondence address and management team) including the patent application at issue, U.S. Pat. Application No. 09/637,923 ("923 Application") to Robert B. Spertell, which was abandoned on September 6, 2002 for failure to reply to a non-final Office Action mailed June 5, 2002. The parent of the '923 Application (U.S. Pat. Application No. 08/904,175, now U.S. Patent No. 6,104,959) was assigned from inventor, Robert B. Spertell, to Microwave Medical Corporation. The assignment document expressly assigned all continuation and divisional applications (such as the '923 Application), and was

Docket No. : MWMED.001DV1  
Appl. No. : 09/637,923

recorded in the United States Patent and Trademark Office on July 31, 1997 at Reel 008662 and Frame 0965.

4. On August 14, 2000, I filed the '923 Application claiming priority as a divisional application of U.S. Patent Application 08/904,175 ("175 Application"), which issued as U.S. Patent No. 6,104,959.

5. Raymond Bogucki, Esq. was retained by Microwave Medical Corporation and MW Medical, Inc. as co-counsel for prosecution of the '923 Application. Mr. Bogucki was a solo practitioner who provided input while my firm handled all filings, docketing, and receipt of Patent Office correspondences for the application. See Exhibit 2. Besides Mr. Bogucki, I was the only other attorney who had firsthand knowledge of the prosecution and abandonment of the '923 Application.

6. While I sent correspondences relating to the filing of the present application to Mr. Bogucki, I also sent similar correspondences directly to Grace Sim, the Chief Financial Officer of MW Medical, Inc. (who also handled issues related to Microwave Medical Corporation) at the office address of 6617 Scottsdale Rd., Suite 103, Scottsdale, AZ 85283, to make sure that all involved parties were fully informed of the progress of the application.

7. On February 4, 2002, I sent a correspondence to Ms. Sim updating her on the status of the above-identified application. I informed her that no correspondence had been received from the Patent Office. I had become aware in early 2002 that MW Medical was undergoing financial difficulties and realized that the company was having difficulty paying its bills (including those from my firm). See Exhibit 3.

8. I received a non-Final Office Action from the USPTO mailed June 5, 2002, and sent on June 12, 2002 via First Class Mail, a cover letter and a copy of the Office Action to Ms. Sim at the aforementioned MW Medical, Inc. business address of 6617 N. Scottsdale Road, Suite 103, Scottsdale, Arizona 85253. See Exhibit 4. A copy of the letter was also sent to Mr. Bogucki.

9. At some point between June 12 and June 19, 2002, the letter and Office Action that I sent to Ms. Sim were returned by the post office marked "Returned to Sender" with the reason for non-delivery circled as "Expired Order." A line had been drawn through the business address of MW Medical, Inc. on the front of the envelope. See Exhibit 5. This business address was the only address in my files for contacting MW Medical, Inc. or Microwave Medical Corporation. Furthermore, there were no working telephone numbers for either company in my file.

10. In addition to attempting to contact Ms. Sim directly, I also contacted Mr. Bogucki to see if he knew how to reach Ms. Sim or other contacts at MW Medical, Inc. or Microwave Medical Corporation. On June 19, 2002, I forwarded Mr. Bogucki the letter that was sent to Ms. Sim and subsequently returned, asking for any suggestions on how to handle the situation since MW Medical personnel could not be reached. See Exhibit 6. Mr. Bogucki was not able to provide me with any updated contact information.

11. I attempted to contact MW Medical personnel, by various methods of communication, including letter and telephone, between the time of receiving the first Office Action and the date upon which the application became abandoned on September 6, 2002. As I was unable to obtain any instructions from my client as I had no viable means of contacting them, no response was filed to the outstanding Office Action of the present application by the September 5, 2002 deadline. At no point in time did I ever receive any affirmative instructions from Ms. Sim or anyone else at MW Medical to let the application go abandoned. As my understanding was that MW Medical was defunct, no further action was taken by me in connection with the present application.

12. After the present application became abandoned on September 6, 2002, I repeatedly tried to, but remained unsuccessful, at establishing contact with MW Medical. My efforts to reach MW Medical personnel continued well beyond the date of abandonment of the application. For example, we received correspondence from our Brazilian foreign associate that annuities fees for a Brazilian application that I had been prosecuting on behalf of Microwave Medical Corporation were due on January 20, 2006. See Exhibit 7. On December 2, 2005, I attempted to forward the correspondence from our Brazilian foreign associate to Ms. Sim at MW Medical, Inc. to notify her that fees were due. On December 12, 2005, the letter was returned by the post office marked "Returned to Sender" with the reason for non-delivery cited as "Attempted - Not Known - Unable to Forward." A line had been drawn through the business address of MW Medical, Inc. on the front of the envelope. See Exhibit 8.

13. Due to my numerous failed attempts to contact MW Medical personnel throughout the years following the abandonment of the present application, no further action was taken. As an attorney who had received no instructions on how to proceed with the application, I was unaware of whether the client wanted to abandon the application and was simply not in a position to revive the abandoned application on my own without instructions. It was not until circa October 2007 that I was contacted by a third party, Mark Deem, who was interested in

Docket No. : MWMED.001DV1  
Appl. No. : 09/637,923

acquiring the assets of MW Medical and Microwave Medical. Only then did I learn that MW Medical, Inc. had assigned the rights of the '923 Application to Jan Wallace in 2003, and that she had later transferred the rights to Miramar Labs, Inc. in 2007. I also learned that Jan Wallace did not intend for the '923 Application to be abandoned, and immediately transferred my files to representatives of Miramar Labs so that they could diligently revive the application.

14. I believe that the entire delay from the time of the abandonment of the '923 Application, to the filing of the revival petition on March 7, 2008 was unintentional as I was unable to reach my client and had no knowledge of my client's decision to pursue the patent application.

15. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Date:

8/22/2008



Douglas R. Hanscom, Esq.  
Jones, Tullar & Cooper, PC

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